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No. 89-332

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 890,
Petitioner,
vs.
J.R. NORTON COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Section 6 of the Norris-LaGuardia Act (29 U.S.C. section 106) — which sets a higher standard of proof for holding a union vicariously liable for its members' acts — applies to state court actions seeking damages as a result of violent strike-related conduct.

LIST OF PARTIES

Petitioner and defendant below: General Teamsters, Warehousemen and Helpers Union, Local 890.

Respondent and plaintiff below: J.R. Norton Company.

The Norton Company is affiliated with the following entities: Modern Ginning Co.; Cal-Fresh, Inc.; Norton Feeding Co.; Spur Industries, Inc.; and Colorado River Development Corp.

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OPINIONS BELOW

The opinion of the California Court of Appeal, Sixth Appellate District, reported as *J.R. Norton v. General Teamsters, Warehousemen and Helpers Union, Local 890*, 208 Cal.App.3d 71 (1989) is attached as Appendix A to petitioner's brief. The decision of the California Supreme Court denying review of that decision has not yet appeared in official reports. It is attached as Appendix B to petitioner's brief.

JURISDICTION

Jurisdiction is not proper since petitioner's writ does not raise any federal question. The Norris-LaGuardia Act is — both by its terms and by rulings of this court — not applicable to state court actions for violent, unlawful strike activities. Since Congress specifically excluded state courts from the reach of the Norris-LaGuardia Act, the decision below by the California courts cannot raise any federal question.

STATUTE INVOLVED

The federal statute involved here is section 6 of the Norris-LaGuardia Act (29 U.S.C. section 106).

STATEMENT OF THE CASE

A. The Proceedings Below

In September, 1982 respondent and plaintiff J.R. Norton Company (Norton) filed a complaint in California's Monterey County Superior Court for damages and injunctive relief against petitioner/defendant General Teamsters, Warehousemen and Helpers Union, Local 890 (the Union or the Teamsters) for misconduct arising from a strike called by the union.

The case was tried before a jury for 11 days between January 7-24, 1986. The jury returned special verdicts, finding six individual defendants liable for damages arising from numerous acts of strike-related violence and

for violations of California Civil Code Section 51.7.[1] The jury also found that those defendants and the Union acted with malice and oppression and assessed them punitive damages. The jury assessed $20,000 in compensatory damages, $2,000 in civil penalties and $1,000 in punitive damages against the individual defendants.

The jury found the Teamsters liable on only the third cause of action for negligent supervision of the strikers and assessed it $250,000 in compensatory damages and $360,000 in punitive damages. The union appealed, based in part on its contention that it was error not to apply the higher burden of proof for a union's vicarious liability set forth by the Norris-LaGuardia Act. The California Court of Appeal rejected that contention, holding that the Norris-LaGuardia Act is — by its own terms — drawn solely as a limit on the remedial powers of the federal courts. The California Supreme Court denied review without issuing an opinion on May 18, 1989.

B. The Relevant Facts

This action arises out of a labor dispute between striking members of the Union and Norton, which began on September 21, 1982. Norton is an Arizona farming corporation which grows and sells lettuce and other farm products. In 1982, Norton farmed lettuce on a rotational system in Gilroy, Blythe and the Imperial and Salinas

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[1] Section 51.7 of the California Civil Code provides: "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, or position in a labor dispute."

valleys in California, as well as parts of Arizona and New Mexico.

The Union was the elected representative of certain Norton employees, whose job duties included driving haul trucks with box stitching machines from the truck shops on Norton's ranches to the lettuce fields. There, they stitched and folded boxes containing the harvested lettuce and hauled them to the cooling facility for shipment.

Numerous witnesses testified at trial to an ongoing campaign of violence, threats, intimidation and harassment by the strikers all aimed at disrupting Norton's attempts to package and ship harvested lettuce. Norton's president, Art Carroll, testified that on Day One of the strike, nearly 20 picketers blocked the entrance to one of Norton's ranches. Monterey County sheriff's officers were dispatched to the scene to disperse the strikers and a shoving match with the officers ensued. The sheriffs eventually resorted to their batons to move the picketers along. Striker Jack Atwood, one of the individual defendants, was arrested for refusing to move and for interfering with the sheriff's officers. Atwood was one of three elected negotiators for the Union before and during the strike.

The stitching machines — large sewing machine-type devices used to seal boxes of harvested lettuce — were sabotaged, spraying machine parts around when used. Celestino Nunez, who had 20 years experience working with such machines, testified that certain machine parts had been either removed or placed in backwards, causing the machines to explode.

Much of the strike misconduct involved what the defendants euphemistically called "road games," a method of disrupting Norton's operations and terrorizing its workers. Sharp objects were scattered in the path of

Norton trucks, some of which carried field workers, shots were fired and objects thrown at Norton drivers, with some run off the road by strikers.

The jury heard testimony from several witnesses to numerous highway incidents with the strikers. Among these were incidents in which: strikers would drive head-on toward Norton trucks; strikers would drive in front of trucks and slow down, preventing the drivers from changing lanes or making turns; rocks and bottles were thrown at trucks; nails, spikes and other sharp objects were scattered in front of trucks, causing many flat tires. One of these incidents involved a labor bus full of passengers. Oscar Blevens testified that individual defendant David Ledesma, Jr., the local's shop steward, who was also an elected member of the union's negotiating team, tried to drive him off the road.

On the second day of the strike, Norton filed its complaint for injunctive relief and was granted a temporary restraining order prohibiting violence on the picket line. Norton sent mailgrams to the local on October 5 and October 11, 1982, complaining of continued violence.

Portions of Atwood's deposition were read to the jury in which he admitted to receiving as much as $3,000 from the union for his negotiating and picketing activities. He was authorized by the union to charge food at a nearby market and gasoline for strike-related activities.

After Atwood was arrested the first day, he asked the sheriffs to drop him at the union hall following his release. He was represented by Anne Hipshman, the local's attorney, free of charge. The Union also reimbursed Atwood's court-imposed fine.

The evidence showed that despite the Union's knowledge of its members' repeated acts of violence, the

Teamsters took no steps to either investigate or halt the misconduct. Instead, the Teamsters took what can at best be described as a passive role in overseeing its members, in effect turning them loose to do as they pleased. In connection with its failure to act, the Union encouraged and assisted the strikers by funding their activities.

REASONS FOR DENYING THE WRIT

Section 6 of the Norris-LaGuardia Act (the Act) provides that:

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable *in any court of the United States* for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U.S.C. section 106 (emphasis added).

The phrase "in any court of the United States" has long been understood to mean that the Act is only applicable in federal court actions and does not affect the state courts. *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 247, 90 S.Ct. 1583, 26 L.Ed. 2d 199 (1970); *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 1140, 1144 (1966).

Petitioner argues that because there is a divergence of opinion among the states as to the applicability of section 6 in state court actions, certiorari is warranted in order for this court to ensure uniformity in the applica-

tion of federal labor law. To support this contention, petitioner points to the following:

(1) Michigan and Louisiana have both held that section 6 is applicable in their respective courts;

(2) Kansas, Florida, New Mexico and Connecticut have each held that their courts are not required to follow section 6, but have adopted it anyway to further each state's labor policy;

(3) North Carolina, Arizona and Washington have each rejected use of the section 6 liability standard; and

(4) The issue was one of first impression in the California Court of Appeal.

Respondent will show that this argument is irrelevant at best and disingenuous at worst. Both the legislative and judicial history of the Norris-LaGuardia Act demonstrate that Congress at least anticipated, if not intended, that the states would not be bound by the Act.

As early as 1948 the federal courts held that the Act was only applicable to federal court actions. The court in *International Longshoremen's, etc. Union v. Wirtz*, 170 F.2d 183 (9th Cir. 1948) considered the argument that the Act should apply to United States territorial courts. In rejecting that argument, the Ninth Circuit stated that the term "in any court of the United States" contained in the Act limited its reach to federal courts created by Article III of the United States Constitution. *Wirtz*, 170 F.2d at 185. *See United States v. Barbeau*, 92 F.Supp. 449, 450 (D. Terr. of Alaska 1950).

This reasoning was later expanded upon and adopted by the Third Circuit, which held that the Act had no application in state court actions. The court in *American Dredging Co. v. Marine Division, Internat'l Union of Op. Eng.*, 338 F.2d 837 (3d Cir. 1964) ordered a United States District Court in Pennsylvania to remand an

action to enjoin breach of a labor contract's no-strike clause which was improperly removed from the state court. The *American Dredging* Court was squarely faced with the question of whether the Act applied to the states and relied on the Act's legislative and judicial history to conclude otherwise:

> As earlier stated in this opinion, the Norris-LaGuardia Act declared in its title that it was:
>
> "AN ACT
>
> "To *amend* the *Judicial Code* and to *define and limit* the jurisdiction of courts sitting in equity."
>
> We further cited, in part, Section 2 of the Act — captioned "Declaration of the public policy of the United States" wherein it was stated:
>
> "In the interpretation of this Act and in determining the jurisdiction and authority of the *courts of the United States*, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> "* * * therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the *courts of the United States* are hereby enacted." (emphasis supplied).
>
> To the foregoing must be added that section 13(d) of the Act provides:
>
> "The term '*court of the United States*' means *any court of the United States* whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." (emphasis supplied).

And last but not least, the very first sentence of section 4 of the Act states:

"*No court of the United States* shall have jurisdiction to issue any restraining order * * *." (emphasis supplied).

In construing the Norris-LaGuardia Act the Supreme Court has time and again declared that it relates to the jurisdiction of *courts of the United States*.

In Sinclair [Refining Co. v. Atkinson, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed. 2d 440 (1962)] the Court declared that "the Norris-LaGuardia Act deprives the *courts of the United States* of jurisdiction * * *." 370 U.S. 203, 82 S.Ct. 1333. (emphasis supplied).

In Order of Railroad Telegraphers v. Chicago & North Western Railway Co., 362 U.S. 330, pp. 335-336, 80 S.Ct. 761, p. 764, 4 L.Ed.2d 774 (1960), in which the provisions of Section 4 of the Norris-LaGuardia Act were applied, the Court said:

"Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of *federal courts* * * *." (emphasis supplied)

Again, in Marine Cooks and Stewards, AFL v. Panama S. S. Co., 362 U.S. 365, 80 S.Ct. 779, 4 L.Ed.2d 797 (1960) where the Court was required to resolve the issue as to whether the Norris-LaGuardia Act was applicable, it cited the provision in section 1 of the Act "That *no court of the United States*, as herein defined shall have jurisdiction * * *." and held that

"section 4 of that same law specifically denies jurisdiction to *District Courts* to issue any restraining order * * *." 362 U.S. 366, 80 S.Ct. 781. (emphasis supplied)

At page 369, 80 S.Ct. at page 783, the Court said:

"That question — of *United States courts' jurisdiction* to issue injunctions in cases like this — is to be controlled by the Norris-LaGuardia Act.

"That Act's language is broad. The language is broad because Congress was intent upon taking the *federal courts* out of the labor injunction business except in the very limited circumstances left open for *federal jurisdiction* under the Norris-LaGuardia Act." (emphasis supplied)

And at page 372, 80 S.Ct. at page 784 the Court said:

"All we decide is that the Norris-LaGuardia Act deprives *the United States court* of jurisdiction to issue the injunction it did under the circumstances shown." (emphasis supplied).

Earlier, in Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Railroad, 321 U.S. 50, at page 58, 64 S.Ct. 413, at page 418, 88 L.Ed. 534 (1944), it was said of the Norris-LaGuardia Act:

" * * * its prime purpose was to restrict the *federal* equity power * *". (emphasis supplied)

Congress in enacting Norris-LaGuardia, the Court said, at pages 63-64, 64 S.Ct. at page 420, was "exercising its plenary control over

the jurisdiction of the *federal courts* * * *" (emphasis supplied).

In United States v. Hutcheson, 312 U.S. 219, 231, 61 S.Ct. 463, 466, 85 L.Ed. 788 (1941) the Court spoke of Norris-LaGuardia as "still further narrowing the circumstances under which the *federal courts* could grant injunctions in labor disputes." (emphasis supplied)

In Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, Inc., 311 U.S. 91, at page 101, 61 S.Ct. 122, at page, 127, 85 L.Ed. 63 (1940), Mr. Justice Black, speaking for the Court said:

"The Norris-LaGuardia Act -- considered as a whole and in its various parts — was intended drastically to curtail the equity jurisdiction of *federal courts* in the field of labor disputes." emphasis supplied) It may be noted parenthetically that Mr. Justice Black spoke for the Court in Sinclair.

The simple, inescapable fact is that the Act, as it declares, was enacted as an amendment to the *Judicial Code of the United States*, with the declared design to "define and limit" the jurisdiction of *the courts of the United States*. As the cases cited recognize, the congressional intent was to take the *federal courts* "out of the labor injunction business except in the very limited circumstances left open". Marine Cooks and Stewarts, AFL v. Panama S. S. Co., supra.

There is nothing in the language of the Act or its legislative history which can possibly, within "the range of judicial inventiveness", or

the process of judicial *fashioning*, be construed as extending to the jurisdiction of state courts.

In 39 Opinions of Attorneys General, 242, 246 (January 26, 1939) it was said (p. 246) in speaking of the Norris-LaGuardia Act and the Social Security Act:

> "the Norris-LaGuardia Act declares and protects certain rights of labor within the scope of the Federal judicial power — and the Social Security Act provides for such protection within the domain of its operation. *None of these acts attempts to confer or protect such rights within a State generally* and without regard to the constitutional division of powers between the Federal and State Governments." (emphasis supplied).

In Frankfurter and Greene, "The Labor Injunction" (published in 1929) it was said in discussing the then proposed Norris-LaGuardia Act (p. 220):

"[it] explicitly applies only to the authority of *United States courts* 'to issue any restraining order or injunction'. All other remedies in federal courts and *all remedies in the state courts remain available.*" (emphasis supplied).

The jurisdictional limitations of Norris-LaGuardia were strictly construed by the Court of Appeals for the Ninth Circuit as applicable only to "courts of the United States", in International Longshoremen's and Warehousemen's Union v. Wirtz, 170 F.2d 183 (1948), cert. den. 336 U.S. 919, 69 S.Ct. 641, 93 L.Ed. 1082 (1949), rehearing den. 336 U.S. 971, 69 S.Ct.

936, 93 L.Ed. 1121 (1949). It was there held that the term "court of the United States" in the Norris-LaGuardia Act means courts created by Congress under Article III of the Constitution and that it therefore did not include the Circuit Court of the [then] Territory of Hawaii.

In so doing, the Court said (p. 185):

"Long before 1932, when the Norris-LaGuardia Act was enacted, the phrase 'court of the United States' had been given a definite and restricted meaning by the Supreme Court. The phrase, without more, *means solely courts created by Congress under Article III of the Constitution* and not territorial courts. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 546, 7 L.Ed. 242, and many other cases summarized in McAllister v. United States, 1890, 141 U.S. 174, 183, 11 S.Ct. 949, 35 L.Ed. 693." (emphasis supplied).

The Court, in further support, quoted the following from the report offered by the late Congressman LaGuardia with reference to section 13(d) (p. 185):

"The Constitution of the United States in Article III, section 1, provides:

> "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

"The provisions of the bill are *expressly limited* (sec. 13(d)) *to courts whose jurisdiction has been or may be conferred by the Congress, under the foregoing provisions of the Constitution.* The Congress having the power to

> establish, and confer jurisdiction upon, the courts in question, it can not be questioned that it has the power to restrict or curtail the exercise of *their* powers, as proposed in this bill. * * *" (emphasis supplied).
>
> Immediately following this quotation the Court said:
>
> "This limitation to the federal courts as distinguished from other courts of the prohibition against the interdicted injunctions is clearly followed throughout the entire report of the House committee. The Congressional power invoked is described as 'power over the *federal* judiciary generally.' This is followed by a chapter entitled 'A. Congressional power over the *Federal* courts generally,' again referring to the courts created under the provisions of Article III, Section 2. * * *
>
> "In the Senate report there is discussed 'The limitation of the jurisdiction of *Federal* courts to issue injunctions in labor disputes * * *'."

American Dredging Co., 338 F.2d at 851-53.

The court noted that where Congress intends legislation to extend to the state courts, it has expressed its intent clearly:

> For example, in section 204(d) of the Emergency Price Control Act of 1942, 56 Stat. 32, 50 U.S.C.A. App. section 924(d) it was provided in relevant part:
>
> > "Except as provided in this section, *no court*, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation * * *, or to stay, restrain,

> enjoin or set aside * * any provision of this Act * * *."

American Dredging Co., 338 F.2d at 855 (emphasis supplied by court).

Based upon all this, the *American Dredging* Court concluded that the Norris-LaGuardia Act was only intended to affect the federal courts and that to rule otherwise would amount to legislation by judicial fiat:

> We do not subscribe to the proposition that a federal court can extend the reach or sweep of a federal statute beyond its clearly defined provisions.
>
> Courts have inherent power to construe legislation and to *fashion* remedies to effectuate the legislative design but they do not have power to legislate, directly or indirectly, nor can they *amend* legislation to extend its clearly defined limits under the shelter of their power to *fashion remedies*.
>
> The Constitution of the United States has reserved to the Congress the power to legislate. Article I, section 1 provides that "All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives".
>
> Not even the Supreme Court of the United States can usurp the legislative power reserved to the Congress by the Constitution. The Supreme Court itself has time and again paid homage to the doctrine of the separation of powers decreed by the Constitution and declared that judicial legislation is abhorrent to,

and in violation of, the Constitutional scheme.

Id. at 850. (emphasis supplied by court).

Consequently, no federal court that has considered the issue has ever found that Norris-LaGuardia affected state law. In *United Mine Workers v. Gibbs, supra*, 383 U.S. 715, this court held that federal courts must apply the Act when they entertain pendent state claims. However, the *Gibbs* court was careful to point out:

> Plainly section 6 applies to *federal court* adjudication of state court claims arising out of labor disputes, whether or not they are associated with claims under section 303 to which this section does not apply.

Id. at 1144. Moreover:

> This court has consistently recognized the right of states to deal with violence and threats of violence appearing in labor disputes, sustaining a variety of remedial measures against the contention that state law was preempted by the passage of federal legislation.

Id. at 1140.

Petitioner seeks review in part because the issue was one of first impression for the California Court of Appeal. This statement is correct but misleading since the California Supreme Court resolved this issue more than 30 years ago. Before the ruling in *Gibbs*, the California Supreme Court ruled, in *McCarroll v. L.A. County District Council of Carpenters*, 49 Cal.2d 45, 315 P.2d 322 (1957), that the Act had no application in state court actions. Plaintiff was the object of labor strikes and picketing during the term of a collective bargaining agreement. He sued for breach of the agreement's no-strike clause, interference with his business and violation of the Cartwright Act, Cal. Bus. & Prof.

Code sections 16700, *et seq.* Plaintiff was granted a preliminary injunction and defendants appealed. The court, in an opinion by Chief Justice Traynor, discussed, among other things, what effect the Norris-LaGuardia Act had on the state courts.

The Act, 29 U.S.C. sections 101-115, places various limitations on federal courts hearing labor disputes. Section 101 prohibits injunctions in labor disputes except "in strict conformity with the provisions of this Chapter." Section 106 restricts the courts' ability to hold officers or unions responsible for unlawful acts absent a showing by clear and convincing evidence that they ratified, participated in or authorized unlawful conduct. Section 106 does not distinguish between actions at law or in equity.

Defendants in *McCarroll* argued that since state courts enforcing federal rights under 29 U.S.C. section 301 (dealing with suits for breach of collective bargaining agreements) must follow the provisions of federal law, so must a state court follow the provisions of the Norris-LaGuardia Act. Chief Justice Traynor rejected that argument:

> If it is assumed that federal courts cannot enjoin strikes in actions under 301 save in compliance with the strict requirements of the Norris-LaGuardia Act, state courts enforcing federal rights are not necessarily subject to the same restraints . . . .

49 Cal.2d at 61.

In discussing the anti-injunction portions of the Act contained in Section 101, the *McCarroll* Court held:

> The Norris-LaGuardia Act is in its terms drawn as a limitation on the courts of the United States . . . . *It did not limit the remedial*

> *power of the state courts . . . .*

Id. at 63 (emphasis added).

Although the *McCarroll* Court was considering Section 101 of the Act, it was addressing the Act in general when it said:

> . . . The restrictions on the remedies available in the Federal Courts arises not from any policy in the Labor-Management Relations Act itself but from the Norris-LaGuardia Act *and the policy of the statute as we have seen is confined to federal courts . . . .*

Id. at 64 (emphasis added).

Any doubts as to the validity of the *McCarroll* ruling were laid to rest by this court, which adopted Chief Justice Traynor's language approvingly in *Boys Markets, Inc. v. Retail Clerks Union, Local 770, supra*, 398 U.S. 235 (1970):

> . . . we agree with Chief Justice Traynor of the California Supreme Court that "whether or not Congress could deprive state courts of the power to give such [injunctive] remedies when enforcing collective bargaining agreements, *it has not attempted to do so either in the Norris-LaGuardia Act* or section 301."

398 U.S. at 247 (emphasis added) (citing *McCarroll*, 49 Cal.2d 45, 63).

It is now clear that the Act — by Congressional design — does not apply to the states. Where violent, unlawful picketing activities occur, the states remain free to fashion their own remedies for dealing with such conduct. The policy reasons for such a result have been clearly enunciated by this court. In holding that a union member's state law action against his union for

intentional infliction of emotional distress was not preempted by federal labor laws, this court stated:

> Nothing in the federal labor statutes protects or immunizes from state action, violence or the threat of violence in a labor dispute [citations], and thus there is no risk that state damages actions will fetter the exercise of rights protected by the NLRA. On the other hand, our cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order . . . ." [citation]. And, as with [ ] defamation actions . . ., state court actions to redress injuries caused by violence or threats of violence are consistent with effective administration of the federal scheme: Such actions can be adjudicated without regard to the merits of the underlying controversy. [Citation.]

Farmer v. United Brotherhood of Carpenters and Joiners, 430 U.S. 290, 299-300, 97 S.Ct. 1056, 51 L.Ed. 2d 338 (1977).

The fact that some states have chosen to import the section 6 vicarious liability standard into their labor policies merely reflects those states' individual choice in the matter. Other states, free to reject the higher standard, have done so, along with other provisions of the Act.[2] The Supreme Court of North Carolina

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[2] Petitioner's reliance on decisions by the Supreme Courts of Louisiana and Michigan is misplaced since the rulings of those courts holding that the Act applies to them are based on misreadings of the Act or prior decisions of this court. The court in *Melancon v. United Association of Journeymen, etc., et al.*, La.App., 386 So.2d 669 (1980) misread section 6 of the Act, stating that it applied "in any court *in* the United States." *Id.*, at 670 (emphasis added). The

(continued)

reached this conclusion in *R.H. Bouligny, Inc. v. United Steelworkers of America*, 154 S.E.2d 344 (1967). And in *Carter-Glogau Labs v. Construction Laborers Local 383*, 736 P.2d 1163 (Ariz. 1986), the Arizona high court found the *Gibbs* case to be dispositive of the issue, and found that state agency rules and not the strict federal rule applied to unions in state courts.

The plaintiff in *Carter-Glogau* was a manufacturer who sought to hold a union vicariously liable for unlawful acts of union members during a strike. Plaintiff sued for property damage and sought punitive damages for the wrongful conduct. Picketers at plaintiff's plant threatened employees with violence, threw bent nails into the parking lot, threw acid on cars, spat at employees, *etc.* There was also evidence that union stewards, business agents and picket captains acquiesced in or participated in the wrongful conduct. The trial court awarded compensatory and punitive damages against the union. The union contended that section 106 of the Act applied to a state court resolution of a state tort claim, and that the trial court had used the wrong standard of proof (preponderance of the evidence) rather than "clear proof" (required by the Act) at the trial.

The defendant claimed that *Gibbs*, *supra*, mandated the application of section 106 to state tort claims against unions in state court as a matter of federal labor policy, thereby preempting state law. The court disagreed. In *Gibbs*, a plaintiff won damages against a union in federal court based on its pendent claims based on Tennessee

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(ftn. continued)
court in *Sowels v. Laborers and International Union of North America*, Mich.App., 317 N.W.2d 195 (1981) misread *Gibbs v. United Mine Workers*, *supra*, as applying to all state tort claims when in fact, as discussed above, that ruling clearly applies only to pendent state claims heard in federal court.

law, though the court dismissed his claims under section 303 of the Labor Management Relations Act. The Supreme Court reversed the award because plaintiff had not established his case by the clear proof required by section 106. The *Gibbs* Court observed that section 106 applied only to cases in federal court and recognized that state courts still have much leeway in dealing with labor violence.

The Arizona court held "it is this language of the court's opinion which we find to be dispositive of this issue; we do not read *Gibbs* as requiring us to apply section 6 to a state tort claim against a union in our courts." *Id.* at 1166.

A Kansas court held that section 106 should apply to state resolution of state tort claims in *Hiestand v. Amalgamated Meatcutters etc.*, 223 Kan. 759, 666 P.2d 671 (1983). In *Hiestand*, the union disputed the use of a jury instruction which ordered the jury to impose liability if it found that by a preponderance of the evidence, and not by *clear* proof, that a union had actually participated in, ratified, or authorized the conduct of its members. The Kansas court held that the jury instruction should have required clear proof, as set out in section 106:

> Federal courts must follow 29 U.S.C. section 106 *but state courts are not bound by the clear, unequivocal and convincing proof standard of 29 U.S.C. section 106.* (Citations omitted.)
>
> . . . .
>
> *The adoption of the "clear proof" standard is a matter of policy since 29 U.S.C. section 106 applies only to federal courts.*

Id. at 763, 666 P.2d at 674-675. The Kansas court held that Kansas policy conformed to section 106 of the

Norris-LaGuardia Act so that its standards should apply in state court. The Arizona court in *Carter-Glogau*, *supra*, held:

> We agree that the adoption of the "clear proof" standard in state court actions involving labor unions is a matter of individual state policy. However, we do not find that the public policy of Arizona mandates the application of section 6.

Id. at 1167.

To determine Arizona policy, the court looked to that state's own statutes, as there was no relevant decisional law. One statute (A.R.S. section 23-1304) makes it unlawful for an employee, or a labor organization or its agents or members, to interfere with a person or his property by way of threats or violence, to cause him to strike against his will. Another statute, A.R.S. section 23-1306 permitted any violator of the above statute to be sued, and provided that "any labor organization, subdivision, or local thereof shall be bound by the acts of its duly authorized agents acting within the scope of their authority, and may be sued in its common name." *Id.* at 1167.

Because the state statutes did not impose a clear proof standard, the court found that Arizona policy did not require that standard. In addition, the court pointed out:

> The fact that Norris-LaGuardia was in existence at the time of the drafting and passage by referendum of Arizona's right to work legislation . . . convinces us that the people of this state deliberately chose not to adopt the more rigorous standard of proof. We cannot read a meaning into a statute that is not within the manifest intent of the legislature as gathered

> from the statute itself. . . . We hold that Arizona courts are not required to apply the section 6 clear proof standard of the Norris-LaGuardia Act in cases involving labor unions as a matter of state policy. This result keeps our normal rules of agency liability consistent and understandable.

Id. at 1167.

In short, the "unacceptable" divergence among the states concerning Norris-LaGuardia bemoaned by petitioner was in fact anticipated by Congress. Petitioner is using this as a ruse by which it seeks special immunity from the consequences of its negligence. If the Teamsters here had been sued for negligence arising out of an auto accident caused by one of its employees on company business, it surely could not in good faith contend that the Act applied to that action. Such a result would be contrary to the intent of the Congress as well as a host of rulings by this court and numerous lower federal courts. The action below involved a state law negligence claim in state court based upon petitioner's misconduct in controlling its members' violent and unlawful picketing activities. As demonstrated, such actions are — by Congressional design — beyond the reach of the Norris-LaGuardia Act.

CONCLUSION

For the foregoing reasons, the Teamsters' petition for a writ of certiorari should be denied.

September 15, 1989

FINKLE, HERSH & STOLL

By: CHARLEY M. STOLL
GARY MICON

Attorneys for Respondent
J.R. Norton Company

No. 89-332

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

General Teamsters, Warehousemen and Helpers Union, Local 890,
Petitioner,
vs.
J.R. Norton Company,
Respondent.

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Donald A. Johnson being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business addresss is 3550 Wilshire Blvd., Suite 916, Los Angeles, California 90010. On September 15, 1989, I served the within BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

KAY T. KINGSLEY, ESQ.
HARRAY, HUDSON & KINGSLEY
Suite 13
210 Capitol Street
Salinas, CA 93901

That affiant makes this service, for CHARLEY M. STOLL, Counsel of Record, FINKLE, HERSH & STOLL, Attorneys for Respondent herein, and that to the best of my knowledge all persons required to be served in said action have been served.

Donald A. Johnson

On September 15, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Donald A. Johnson, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
Theodore Matsuo Wilden
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires NOV 30, 1990

Notary Public in and for
said County and State